IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 6405 OF 2005

State of Maharashtra,
through the Secretary,
Rural Development and Water
Conservation department,
Mantralaya, Mumbai. ...Petitioner.

Vs.

-1. State Election Commission,
through the Commissioner,
New Administrative Building,
Opp.Mantralaya, Madam Kama Road,
Mumbai-400 032.

-2. State Election Commissioner,
Having office at : New
Administrative Building, Opp.
Mantralaya, Madam Kama Road,
Mumbai-400 032.

-3. Asst. Election Commissioner,
Having office at : New Administrative
Building, Opp. Mantralaya, Madam
Kama Road, Mumbai-400 032. ... Respondents.

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Mr. R. S. Apte with Mr. N.R. Bubna for the Petitioner.
Mr. R. V. More for the Respondents.

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CORAM : F.I REBELLO AND
DR.D.Y.CHANDRACHUD, JJ.

September 28, 2005.

ORAL JUDGMENT (PER DR. D.Y. CHANDRACHUD, J.):

In these proceedings under Article 226 of the Constitution, the State of Maharashtra has called into question, directions issued by the State Election Commission on 9th September 2005 and 21st September 2005 in exercise of powers conferred by Article 243-K of the Constitution. The State Election Commission announced an election programme for conducting elections to 2167 Village Panchayats in thirteen flood affected Districts. The election programme commenced on 26th September 2005 and voting is to take place on 23rd October 2005. The term of the aforesaid Village Panchayats had come to an end earlier. The State Election Commission had initially declined to accede to the request of the State Government to postpone the elections in view of the serious conditions that prevailed in certain parts of the State as a result of floods. The State Government moved this Court in a petition under Article 226 of the Constitution (Writ Petition 5234 of 2005) and by a decision rendered on 10th August 2005, a Division Bench of this Court held that the Election Commission was not correct in holding that it had no power whatsoever to postpone the holding of the elections even in a serious situation of a natural calamity. This Court held that the powers of the Election

Commission under Article 243-K in regard to the superintendence, direction and control of the conduct of elections to Panchayats is wide enough to comprehend a rescheduling of elections, where a situation in the whole or a part of the State is such as to preclude a free and fair election. The State Election Commission was directed to take a fresh decision. Accordingly, the Election Commission has fixed an election programme under which, as noted above, the election process commenced on 26th September 2005 and voting is to take on 23rd October 2005.

2. The State of Maharashtra issued a notification on 31st August 2005 through the Rural Development and Water Conservation Department recording that the appointment of Administrators was necessary in order to carry out the day-to-day administration of and duties in the Village Panchayats until elections were over. In exercise of the powers conferred by Section 151(1)(a) of the Bombay Village Panchayats Act, 1958, the State Government directed that the existing members of the Panchayats in the aforesaid 13 Districts shall, under the Chairmanship of each Sarpanch, be retained to constitute a Board of Administrators. On 9th September 2005, the State Election

Commission addressed a communication to the Principal Secretary in the Rural Development and Water Conservation Department pointing out that under Section 27 of the Bombay Village Panchayats Act, 1958, the tenure in office of each Panchayat was five years. Article 243-E of the Constitution also contains a similar provision. The Election Commission recorded that the term of office of the Village Panchayats had expired. The Commission objected to the appointment of the original members of the Grampanchayat including of the Sarpanch as Administrators, stating that what could not be achieved directly could not be done indirectly. The Election Commission held that continuance of the erstwhile members of the Village Panchayats would affect the conduct of elections in a fearless, impartial and clean environment and the appointment of ex-Sarpanchs and Members whose tenure had expired would obstruct the electoral process. The Commission, therefore, called upon the State Government to dismiss the Boards of Administrators and to appoint Government Officers or, as the case may be, employees as Administrators.

3. By a reply dated 16th September 2005, the State Government contended that it was authorised by Section 151(1)(a)

to appoint proper persons as Administrators; that even in the case of elections to the Loksabha or the Legislative Assemblies existing Governments are permitted to continue until a new Government is elected and that the Board of Administrators was bound to follow the election code of conduct. On 21st September 2005, the State Election Commission thereupon issued directives in exercise of powers conferred by Article 243-K of the Constitution. The Election Commission has recorded that the appointment of the members of the erstwhile Village Panchayats whose terms had expired would obstruct the conduct of an impartial election in a fearless and clean environment and that a level ground would not be available for all the candidates contesting the elections. The Election Commission has observed that there was a likelihood that the members of the erstwhile Panchayats would try to take advantage of their posts upon being continued despite the expiry of their terms. In the circumstances, a direction has been issued to the State Government to dismiss the Board of Administrators consisting of the former Sarpanchs, Upa Sarpanchs and members in 2167 Village Panchayats where elections have been directed to be held and to replace them with government officers or employees. This direction of the Election Commission has been

called into question by the State Government.

4. On behalf of the Petitioner, it has been submitted that the State Government is empowered by Section 151(1)(a) to dissolve a Panchayat where the Panchayat has not been validly constituted and to cause all or any of the powers and duties to be performed by such person or persons in such manner and for such period and subject to such conditions as it may think fit. Hence, it was submitted that the State Government was within its statutory power in directing continuance of the existing members of the Village Panchayats albeit as part of Boards of Administrators in each case. Moreover, it was urged that as against 27,892 Village Panchayats in the State, there are 15,721 sanctioned posts of Gram Sevaks and 625 posts of Extension Officers. The term of 2167 Grampanchayats has expired and Counsel appearing on behalf of the Petitioner submitted that 1500 Gram Sevaks are presently appointed in respect thereof. It has been submitted that the State Government cannot spare Government Officers who would be required to act as Administrators of the Village Panchayats. It has been submitted that the Election Commission erred in seeking to draw a parallel with Municipal Corporations and

Municipal Councils since there are only122 Municipal Corporations and 225 Municipal Councils rendering it administratively expedient to appoint Government Officers as Administrators. For many programmes, the accounts of Village Panchayats are operated by the Gram Sevak and the Sarpanch together and it has been submitted that an official senior in rank to a Gram Sevak would have to be appointed as Administrator to sign on cheques together with the Gram Sevak. Finally, it was submitted that even when elections are held to the State or Central Legislatures, existing Governments are allowed to continue and there is no reason why the same procedure should not be permitted by the Election Commission in the present case.

5. Article 243-E(1) of the Constitution provides that every panchayat unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. Clause (3) thereof provides that an election to constitute a Panchayat shall be completed (a) before the expiry of its duration specified in clause (1); and (b) before the expiration of a period of six months from the date of its dissolution. The Bombay Village Panchayats Act, 1958 contains provisions in

regard to the holding of elections to Panchayats that implement the mandate of the constitutional provisions. Section 11(1)(b) provides that an election to constitute a Panchayat shall be completed before the expiry of its duration of five years as prescribed in sub-section (1) of Section 27. Section 27 provides that the members of a panchayat shall, save as otherwise provided in the Act, hold office for a term of five years.

6. The provisions of the Constitution and, in the present case of the Bombay Village Panchayats Act, 1958, thus stipulate that the term of office of a panchayat is a period of five years from the date of the first meeting and no more. The term of all the 2167 Village Panchayats in question, had expired upon the completion of a duration of five years. The State Government purported to exercise powers under Section 151(1)(a) in issuing a direction to the effect that the members of these Panchayats who had held office during the continuance of the term of five years, shall stand constituted as Boards of Administrators and will continue to act as such. The principal submission that has been urged on behalf of the Petitioner in these proceedings is that the State Government was entitled to exercise power under clause (a) of sub-section (1)

of Section 151 and that consequently, it was within the exercise of its statutory discretion to allow the continuance of the erstwhile members of the Panchayats as Administrators. In the circumstances, it was submitted that the powers of the Election Commission under Article 243-K of the Constitution, which operate in a field not governed by statute law, could not be invoked inasmuch as the State Government was empowered to appoint the erstwhile members of the Village Panchayats as Administrators under Section 151.

7. There is, in our view, a basic fallacy in the submission which has been urged on behalf of the State Government. Section 151(1)(a) of the Bombay Village Panchayats Act, 1958, provides as follows:

> "151.(1)(a) Notwithstanding anything contained in this Act or the rules or bye-laws made thereunder, if at any time it appears to the State Government that a panchayat has not been validly constituted, under this Act, the State Government may, by notification in the Official Gazette, dissolve such Panchayat and by the same notification or like notification cause all or any of the powers and duties performed by such person or persons, in such manner and for such period and subject to such conditions as it may think fit:
>
> Provided that on the reconstitution of the panchayat under sub-section (2), such notification shall

> cease to have effect from the date on which the first meeting of the panchayat so reconstituted is held under Section 28."

Section 151(1)(a) operates in an area where it appears to the State Government that a Panchayat has not been validly constituted under the Act. In such a case, the Government is empowered to dissolve the Panchayat and to cause its powers and duties to be performed by one or more persons subject to such conditions as the State Government may prescribe. Now, there is no dispute about the fact that each of the Panchayats in the present case was validly constituted. Section 10(1)(a) provides that a Panchayat shall consist of such number of members not being less than seven and not more than seventeen as the State Government may prescribe, who shall be elected in accordance with Section 11. Sub-section (4) of Section 10 provides that notwithstanding anything contained in sub-section (1) where two-thirds or more of the total number of members required to be elected under sub-clause (i) of clause (a) of sub-section (1) are elected, a failure to elect the remaining members shall not affect the constitution of the panchayat. In this case, the Panchayats in question, were in the first instance validly constituted. In each of

the 2167 Panchayats, the duration of five years, of Panchayats which were validly constituted in the first instance, came to an end upon which the Panchayats could not continue any longer. In these circumstances, it is not open to the State Government to contend that the exercise of powers by the Election Commission under Article 243-K of the Constitution, was contrary to the statutory mandate embodied in Section 151 (1)(a) of the Bombay Village Panchayats Act, 1958.

8. The powers of the Election Commission extend to the superintendence, direction and control of the preparation of electoral rolls for and the conduct of all elections to the Panchayats. The provisions of Article 243-K are *pari materia* to those of Article 324 of the Constitution which have been interpreted in several judgments of the Supreme Court. Article 243-K operates in areas left unoccupied by the legislation. The words 'superintendence, direction and control' are indicative of the broad sweep of the Constitutional provision. This is amplified by the expression “conduct of elections” in respect whereof the Election Commission exercises superintendence and control. In **Mohinder Singh Gill vs. Chief Election Commissioner,** 1978(1) SCC 405,

the Supreme Court emphasised that Article 324 of the Constitution is a plenary provision vesting the whole responsibility for the conduct of elections in the Election Commission. The Election Commission may be called upon to answer unforeseen eventualities not contemplated by existing legislation and its power of achieving the object of free and fair elections cannot be stultified. In this context, the following observations of the Supreme Court are significant :

> "Even so, situations may arise which enacted law has not provided for, Legislators are not prophets but pragmatists. So it is that the Constitution has made comprehensive provision in Article 324 to take care of surprise situations. That power itself has to be exercised, not mindlessly nor mala fide, nor arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification nor existing legislation. More is not necessary to specify, less is insufficient to leave unsaid. Art 324, in our view operates in areas left unoccupied by legislation and the words 'superintendence, direction and control' as well as 'conduct of all elections', are the broadest terms. Myriad maybes, too mystic to be precisely presaged, may call for prompt action to reach the goal of free and fair election."

9. In the present case, the State Election Commission has furnished cogent and valid reasons why the erstwhile members of the Village Panchayats should not be continued as part of the

Boards of Administrators appointed in each case. A serious situation occurred in the State as a result of unprecedented monsoon rains and the resultant floods which had disrupted the common course of life in several parts. In its judgment dated 10th August 2005, the Division Bench of this Court noted that lakhs of families in the State had lost everything and were bereft of food, clothing, shelter, medicine and other necessities of life. In this back ground, the view of the Election Commission that the continuance of the erstwhile members of the Village Panchayats in the Boards of Administrators would upset the impartiality and fairness of the forthcoming elections, cannot be regarded as extraneous to the exercise of powers under Article 243-K of the Constitution. The Election Commission has been concerned that a level ground should be available for all candidates contesting the elections and the Commission was apprehensive of the fact that persons holding posts after the expiry of their terms would attempt to take undue advantage of the situation. These are weighty considerations which cannot be brushed aside. They are not alien to the ambit of powers under Article 243-K. The contention of the Petitioner that the continuance of the existing members of the Village Panchayat is contemplated in normal circumstances when

elections are held and until a new body takes over misses a significant difference. Under Article 243E(3) and under Section 11 (1)(b), an election to constitute a Panchayat has to be completed before the expiry of the duration of five years. The Constitution therefore, envisages the completion of elections before the duration of the existing Panchayat is comes to an end. That is not the situation in the present case, where the duration of the existing term of these Panchayats had already come to an end. A parallel therefore, cannot be drawn between the two situations.

10. The unprecedented scale of human suffering occasioned by floods led to a situation where elections could not be completed within the duration of the term of five years of these village panchayats in the flood affected districts. Under Article 243E of the Constitution a panchayat can no longer continue after the expiry of its duration of five years. A constitutional vacuum is not contemplated in the affairs of the State. The Election Commission has ensured that a vacuum is obviated by making arrangements for the interregnum until the new panchayats are constituted. Since the provisions of Section 151(1)(a) do not empower the Government to appoint administrators beyond the expiry of the constitutional term of five years, it was for the Election Commission

to step in, in the exercise of its powers under Article 243-K. That is what the Election Commission has done.

11. Finally, it was urged that in respect of these 2167 Grampanchayats, the State has filled in posts of 1500 Gram Sevaks. It was submitted that administrative difficulties would be involved in making arrangements for the purpose of conferring administrative powers upon the existing Gram Sevaks so as to cover all the Panchayats. Moreover, it was submitted that for many programmes the accounts of the Village Panchayats are operated jointly by the Gram Sevak and the Sarpanch. In these circumstances, arrangements will have to be made by the State Government to replace the authority conferred upon the Sarpanch. These are matters where the State Government must take all necessary steps to comply with the constitutional directives issued by the State Election Commission. The holding of free and fair elections in a democracy is of paramount importance. The importance which the Constitution ascribes to free and fair elections is evident from the role and position of the Election Commission and the conferment of wide powers upon the Commission that would achieve this significant constitutional goal

in a democratic society. Administrative exigencies cannot be allowed to override the constitutional prescription of free and fair elections. The State Government must and shall do everything that is necessary to cooperate with the mandate of the State Election Commission.

12. In the circumstances, we do not find any infirmity in the directives issued by the State Election Commission. The petition shall accordingly stand dismissed. In the circumstances of the case, there shall be no order as to costs.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)